



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

July 24, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-688

Dear Ms. Briggs:

You have asked this office to determine if certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33056.

The City of Houston (the "city") received a request for information concerning a particular criminal offense. You state that the city has provided the "public release portion of the incident report" to the requestor, but that the remaining portions of the report are excepted from disclosure under section 552.103 of the Open Records Act.

Section 552.103 provides an exception for information which is related to criminal litigation during the pendency of those proceedings and during the appeals period after a conviction. To be excepted under section 552.103, information must be related to the criminal litigation. Open Records Decision No. 551 (1990) at 4. You submitted an affidavit from the prosecuting attorney that indicates litigation is pending in connection with the criminal offense. Our review indicates that the report at issue is related to the pending litigation. You have therefore demonstrated that section 552.103 is applicable. We note that once all parties to the pending litigation have had access to the information at issue, for example, through discovery or at trial, no section 552.103 interest exists with respect to that information. Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2.

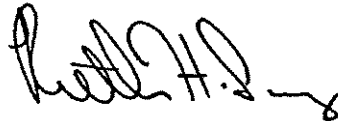
However, it does not appear that you released a detailed narrative of the offense. The "public release information" section of the report lists the details of the offense as "resisting arrest misdemeanor." This is not a sufficiently detailed narrative of the offense. In Open Records Decision No. 597 (1991), we stated that section 552.103 may not be invoked to withhold basic, first page offense report information when a suspect has

already been arrested and made aware of the charges. In *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177, 187 (Tex. Civ. App.--Houston [14th Dist. 1975], writ ref'd n.r.e. per curiam, 586 S.W.2d 559 (Tex. 1976), the court stated that the type of first page offense report information that is open to public disclosure includes a detailed description of the offense in question. See also Open Records Decision No. 127 (1976).

Often, the first page of an offense report will contain a short summary that provides a detailed description of the offense. However, the location of information on the first page or in other pages of the offense report is not determinative. To determine what information is public, the *type* of information must be examined rather than where it is located. We have enclosed a copy of a summary of Open Records Decision No. 127 (1976) indicating what types of information are public. You must provide the requestor a detailed narrative of the offense. To the extent the other information at issue has not been disclosed to the opposing party to the litigation, it may be withheld pursuant to section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. Except as to the discussion of first page type offense report information, this ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding the other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Government Section

RHS/rho

Ref.: ID# 33056

Enclosures: Submitted documents
Summary of Open Records Decision No. 127 (1976)

cc: Mr. C. L. McClellan
9597 Jones Road
Houston, Texas 77005
(w/o enclosures)